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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,482	06/06/2001	Etienne Susini	8-1034-052	9555
803	7590	07/29/2004		
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			EXAMINER FERGUSON, LAWRENCE D	
			ART UNIT	PAPER NUMBER
			1774	

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/875,482	SUSINI, ETIENNE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lawrence D Ferguson	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Response to Amendment***

1. This action is in response to the amendment mailed April 12, 2004. Claim 26 was amended rendering claims 9-26 pending.

***Claim Rejections – 35 USC § 103(a)***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9-10, 12, 14, 16-18, 20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,085,927) in view of Regnier (U.S. 6,451,446).

Dohrer discloses a multilayer film comprising three layers, where the first layer comprises LLDPE having a density from about 0.890 g/cc to about 0.930 g/cc (column 3, lines 19-65) the middle layer comprises polyolefins such as polypropylene, polyethylene (a thermoplastic polyolefin) and LLDPE (column 5, lines 10-20) and the third layer comprises LLDPE having a density from about 0.890 g/cc to about 0.980 g/cc (column 5, lines 40-50). Dohrer discloses the film has an overall thickness ranging from about 0.3 mil to about 5.0mil (7.62  $\mu$ m to 127  $\mu$ m), where the first layer has a thickness of 0.025 to about 0.9mils, the middle layer has a thickness of 0.020 to about 2.7 mils and the third layer has a thickness of between 0.025 to about 0.9 mils (column 6, lines

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20-29). Dohrer does not teach producing the film with any corona oxidation treatment, therefore meeting the limitations of instant claims 14, 16 and 17. The phrase, 'wherein at least one of said outside layers contains less than 1300 ppm of a slip agent' includes 0, meaning the outside layer does not have to obtain a slip agent. Dohrer does not disclose the density or melt index of the middle layer.

Regnier teaches a multilayer film comprising a core layer made of polypropylene having a density of from 0.895 to 0.910 and a melt index of from 0.5 to 10 g/10 min. Dohrer and Regnier are analogous art because they are both from the field of multilayered films. It would have been obvious to one of ordinary skill in the art to include the density and melt index of the middle layer in the film of Dohrer because Regnier teaches the low density polypropylene core layer helps reduce the cost of the multilayer film (column 3, lines 25-30). Although neither reference explicitly shows that the multilayer film has weight percentages as in instant claim 9, such weight percentages are properties which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the weight percent, absent a showing of unexpected results, it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. weight percent) fails to render claims patentable in the absence of unexpected results. The aforementioned limitation is optimizable as it directly affects the mechanical strength and price of the multilayered film. As such, it is optimizable. It would have been obvious to one of ordinary skill in the art to make the film with the limitation of the weight percent since it has been held that

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discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 USPQ 215 (CCPA 1980).

***Claim Rejections – 35 USC § 103(a)***

4. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,085,927) in view of Regnier (U.S. 6,451,446) further in view of Miro et al. (U.S. 5,756,219).

Dohrer and Regnier are relied upon for claims 9, 18, 20 and 22-25. Neither reference teaches a cis-13 docosenamide slip agent. Miro teaches a multilayer film having an interior core layer comprising at least 25% by weight of polypropylene and outer skin layers (column 2, lines 59-62) where one of the skin layers comprises a slip agent of cis-13-docosenamide (column 5, lines 56-65). All of the references are directed to multilayered films. It would have been obvious to one of ordinary skill in the art to include the cis-13 docosenamide slip agent in the outer layer of Dohrer to reduce the tackiness of the layer (column 5, lines 56-62).

***Claim Rejections – 35 USC § 103(a)***

5. Claims 9-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,093,188) in view of Regnier (U.S. 6,451,446).

Dohrer discloses a multilayer film comprising three layers (column 2, lines 11-14)

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where the first layer comprises LLDPE having a density from about 0.890 g/cc to about 0.930 g/cc (column 3, lines 4-14) the middle layer comprises polyolefins such as polypropylene, polyethylene (a thermoplastic polyolefin) and LLDPE (column 3, lines 55-64) and the third layer comprises LLDPE having a density from about 0.890 g/cc to about 0.980 g/cc (column 4, lines 3-22). Dohrer discloses the film has an overall thickness ranging from about 0.3 mil to about 3.0mil (7.62  $\mu\text{m}$  to 76.2  $\mu\text{m}$ ), where the first layer has a thickness of 0.025 to about 0.9mils, the middle layer has a thickness of 0.020 to about 2.7 mils and the third layer has a thickness of between 0.025 to about 0.9 mils (column 2, lines 48-56). The reference teaches the melt temperature of the first and third layers as 510°F (265°C) and 480°F (248°C), respectively (column 6, lines 40-42) where the polyolefins have a softening point, which is defined as a Vicat temperature. Dohrer does not teach producing the film with any corona oxidation treatment, therefore meeting the limitations of instant claims 14, 16 and 17. The phrase, 'wherein at least one of said outside layers contains less than 1300 ppm of a slip agent' includes 0, meaning the outside layer does not have to obtain a slip agent. Dohrer does not disclose the density or melt index of the middle layer.

Regnier teaches a multilayer film comprising a core layer made of polypropylene having a density of from 0.895 to 0.910 and a melt index of from 0.5 to 10 g/10 min. Dohrer and Regnier are analogous art because they are both from the field of multilayered films. It would have been obvious to one of ordinary skill in the art to include the density and melt index of the middle layer in the film of Dohrer because Regnier teaches the low density polypropylene core layer helps reduce the cost of the

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multilayer film (column 3, lines 25-30). Although neither reference explicitly shows that the multilayer film has a weight percentage as in instant claim 9, such weight percentages are properties which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the weight percent, absent a showing of unexpected results, it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. weight percent) fails to render claims patentable in the absence of unexpected results. The aforementioned limitation is optimizable as it directly affects the mechanical strength and price of the multilayered film. As such, it is optimizable. It would have been obvious to one of ordinary skill in the art to make the film with the limitation of the weight percent since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 USPQ 215 (CCPA 1980).

***Claim Rejections – 35 USC § 103(a)***

6. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,093,188) in view of Regnier (U.S. 6,451,446) further in view of Miro et al. (U.S. 5,756,219).

Dohrer and Regnier are relied upon for claims 9 and 18-25. Neither reference teaches a cis-13 docosenamide slip agent. Miro teaches a multilayer film having an

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interior core layer comprising at least 25% by weight of polypropylene and outer skin layers (column 2, lines 59-62) where one of the skin layers comprises a slip agent of cis-13-docosenamide (column 5, lines 56-65). All of the references are directed to multilayered films. It would have been obvious to one of ordinary skill in the art to include the cis-13 docosenamide slip agent in the outer layer of Dohrer to reduce the tackiness of the layer (column 5, lines 56-62).

### ***Response to Arguments***

7. Objected to claim 26 under 37 CFR 1.75(c) is withdrawn due to Applicant amending the claim.

Arguments made regarding rejection under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,085,927), Dohrer (U.S. 5,093,188) and Regnier (U.S. 6,451,446) have been considered but are unpersuasive. Applicant argues there is no hint as to the solution of the claimed invention in the prior art. Applicant is arguing intended use, which is given little patentable weight in product claims. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Applicant argues Dohrer does not teach the weight percentage of the polypropylene, density or melt index of the middle layer. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*



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*Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The weight percentage of polypropylene is optimizable and directly affects the integrity and durability of the multilayer film. It would have been obvious to one of ordinary skill in the art to optimize the components because discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch* 205 USPQ 215 and see *In re Aller* 105 USPQ 233. Regnier teaches a multilayer film comprising a core layer made of polypropylene having a density of from 0.895 to 0.910 and a melt index of from 0.5 to 10 g/10 min. Applicant argues Regnier does not teach the taught weight percentage of polypropylene of the middle layer. Regnier was introduced to teach the conventionality of the density and melt index of the intermediate layer. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The argument towards claim 26 is moot based on grounds of newly added prior art.

### **Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-

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272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LF

Lawrence Ferguson  
Patent Examiner  
AU 1774

Bruce Hess

B. HARRIS FOR PRES  
PRIGGATY